Rule 280 Responsiveness Summary

Comment #1: The proposed fee structure is unreasonable and the proposed annual fee structure disproportionately burdens electric utilities. The original intent of the fee rule changes was to provide equitable relief to the larger Title V sources. In particular, electric utilities were burdened by increasing annual administrative permit fees and costly emission fees. However, it now appears that MCAQD intends to revert back to the old fee structure, contrary to the original intent of the rule revision. In 2004, for example, APS paid MCAQD a total of $23,280 in administrative fees for its West Phoenix and Redhawk Power Plants. Under proposed Rule 280, APS's administrative fees would increase to $138,000 for these plants. This represents an increase of more than $114,000 in administrative fees in one year, and the commenter believes this is unwarranted. The commenter understands the need to periodically increase fees to reflect the increased costs of program administration; however, believes the proposed increase goes beyond any reasonable increase in administrative costs and is not justifiable.

Response: In 2003, Maricopa County implemented a new fee structure that decreased revenues from annual emission-based fees, increased revenues from annual administrative fees, and updated the revenue basis for processing permit applications. The revised fee structure remains in place. The new annual administrative fee for utility turbines is not the result of a revised fee structure. The new fee is the result of an updated workload analysis. MCAQD updated its workload analysis and determined that the workload associated with conducting source performance testing and continuous emissions monitoring relative accuracy test audit certifications (CEM RATA) at utility sources was substantially underestimated in the 2002 workload analysis. One reason this underestimate resulted was because the 2002 workload analysis calculated the hours associated with source testing and CEM RATA certifications per utility rather than per utility turbine subject to performance testing. The number of turbines at an individual utility ranges from 2 to 8 turbines per utility. These turbines are subject to new source review and prevention of significant deterioration (NSR/PSD) permit conditions that require annual source testing for each unit and audits of their associated continuous emission monitors. Currently, there are 30 Maricopa County permitted utility turbines that are subject to performance and/or CEM RATA testing. Testing requirements for turbines specify each performance test consist of 3 separate test runs per capacity test and 2 to 4 different capacity tests per turbine. These testing requirements consume significant Department resources. For the most part, testing requirements for other source categories only require a single operating scenario/capacity test per unit or facility not multiple operating scenario/capacity tests per unit. The requirement to test each turbine at multiple operating scenario/capacities significantly increased the testing workload per utility above the average testing hours for other source categories. For this reason, MCAQD separated the testing workload from the base per utility administrative fee to more equitably assess fees on a per unit tested basis.

Comment #2: The proposed fee structure is contrary to state law and is substantially more stringent than the state fee structure. The commenter compares the Arizona Department of Environmental Quality administrative fee of $11,490 per plant (including

all turbine units) with MCAQD's proposed fee of $15,130 per turbine and states that because MCAQD's proposed rule is more stringent than corresponding state requirements, MCAQD must satisfy ARS § 49-112.(2)(a) and (2)(b).

Another comment states that in the Notice of Proposed Rulemaking on proposed Rule 280, published April 1, 2005, MCAQD explained its position that the revised fee rule and corresponding significant fee increases meet the statutory requirement because Maricopa County fails to meet the National Ambient Air Quality Standards for ozone and particulates. Maricopa County is the only ozone nonattainment area and only PM10 serious nonattainment area in Arizona. The commenter states that the statute, however, requires more than just a "peculiar local condition." MCAQD is also required by state law to demonstrate that the proposed fee rule is "necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible." [ARS 49-112.A.2(a)] The commenter states that MCAQD has not made this demonstration. First, MCAQD has failed to demonstrate how a substantial increase in administrative fees will "prevent" a significant threat to public health or the environment resulting from nonattainment. If increase administrative fees would indeed "prevent" a significant threat resulting form nonattainment, the MCAQD presumably would have raised its fees long ago. Any attempt to link a revised fee structure to the "prevention" of significant health or environmental threats simply has no merit.

MCAQD also has not demonstrated how the increased fee structure is "technically and economically feasible." The plan meaning of "technical feasibility" is that a proposed technology is available and viable for the source. We believe that administrative fees cannot be "technically feasible" and thus were not intended to fall within the scope of this provision. MCAQD also has not attempted to demonstrate how its proposed fee increase is economically feasible for regulated sources. The fee increase is extremely onerous, particularly for utility sources. From our perspective, proposed Rule 280 is not economically feasible.

Response:
ARS § 49-112 A authorizes the County to promulgate rules that are more stringent than state requirements if the following conditions are met:

(1) The rule must be necessary to address a peculiar local condition.

*(2) There is credible evidence that the rule is **either:***

> *(a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible.*
>
> *(b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal*

statutes or regulations if the county rule, ordinance or other regulation is equivalent to federal statutes or regulations.

MCAQD believes that Rule 280 meets the requirements of ARS § 49-112 (1) and (2)(b) and as such is not required to meet requirements specified under ARS § 49-112 (2)(a). Rule 280 meets ARS § 49-112 (1), *necessary to address a peculiar local condition*, because Maricopa County fails to meet the National Ambient Air Quality Standards for ozone and particulates and Maricopa County is the only ozone nonattainment area and only serious PM_{10} nonattainment area in Arizona.

Rule 280 meets ARS § 49-112 (2)(b), *required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement*, given that the federal Clean Air Act § § 161, 165, 173, and 502 require state and local governments that have jurisdiction over stationary sources to adopt permitting programs for new source review, prevention of significant deterioration, and Title V operating permits. Maricopa County's rules for these programs are substantially identical to procedures for the review, issuance, revision and administration of permits issued by the State. However, these procedures contain requirements specific to nonattainment area status, increment consumption analysis and impacts on nearby nonattainment areas. These requirements result in permit conditions that address the source's proximity to the ozone and PM_{10} nonattainment areas and specific atmospheric and geographical conditions found at the source's location.

Specific to electric utilities, the provisions of 40 CFR Part 60 Subparts GG (Performance for Stationary Gas Turbines) and Da (Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978) require performance testing and testing at different load scenarios. Further, Maricopa County Rule 270, which has been approved in the federally enforceable State Implementation Plan, refers to the Arizona Testing Manual. Section 1.2 of the manual requires that major sources having multiple emission points must submit facility test schedules assuring annual testing of major emission sources and multi-year rotation of minor emission point verification as required by permit conditions.

Lastly, the federal Clean Air Act § 502(b)(3)(A) requires that all sources required to obtain a permit under Title V pay an annual fee sufficient to recover all reasonable (direct and indirect) costs required to develop and administer the permit program. The section specifically mentions that reasonable costs include emissions and ambient monitoring. MCAQD believes the proposed utility turbine fee which resulted from the updated workload hours associated with conducting source performance testing and CEM RATA at utility sources more realistically reflects the testing workload per utility and more equitably assess fees on a per unit tested basis.

Comment #3: The proposed fee structure exceeds the reasonable costs to administer the program. ARS § 49-112.A.3 provides that fees must not exceed the reasonable costs of the County to administer the program. MCAQD has failed to demonstrate how the proposed substantial fee increase is commensurate with its reasonable program administration costs. The proposed fee increase is projected to result in a substantial

budget surplus ($349,000, based upon recent estimates). This surplus plainly exceeds the reasonable costs of the County to administer the program and is thus contrary to state law. The proposed increase from the electric utilities is not necessary to assure that the reasonable administration costs of the County are covered.

Response: The $348,958 budget surplus is based on fee revenue estimates contained in the April 1, 2005, Notice of Proposed Rulemaking. This surplus is made up of $21,073 from fee revenue and the federal EPA grant combined, and $327,885 from Trip Reduction Program (TRP) and Voluntary Vehicle Repair and Retrofit (VVRR) program grants. Monies from the TRP and VVRR grants can only be used for costs related to those specific programs. Further, the $327,885 surplus would exist only if all projected revenues are collected and all budgeted expenditures would occur. MCAQD believes the surplus of $21,073 from fee revenue and federal EPA grant is insubstantial and does not exceed the reasonable costs of the County to administer the program.

Overall, MCAQD estimates air quality department expenditures in fiscal year 2006 (excluding Trip Reduction and Voluntary Vehicle Repair and Retrofit programs which are grant funded) will be approximately $11.1 million and revenues with the proposed fee amendments in fiscal year 2006 will be approximately $11.1 million. The fiscal year 2006 revenue projections comprise $9.4 million in fee revenue from the proposed fee amendments, $1.1 million in federal EPA grant funding, and $0.6 million in miscellaneous revenues. Therefore, MCAQD believes the increase in fees for sources covered by MCAQD rules or programs does not exceed the reasonable costs of the county to issue and administer that permit or plan approval program.

Comment #4:
The annual administrative fees for new and modified utility turbines should be reduced to reflect a more realistic time estimate for providing compliance oversight of utility turbines by MCAQD. The annual administrative fee amount of $15,130 is based on the amount of time estimated for MCAQD inspectors to observe the tests and review test reports. Specifically, MCAQD staff estimated that it will take up to 54 hours to review each test report. This estimate appears excessive given the format and conciseness of the test reports. It has been suggested that submission of electronic versions of the test reports might make the review time shorter. The commenter supports this idea and request MCAQD to engage the stakeholders in discussions leading to implementation of this suggestion.

Response:
MCAQD estimates it takes 54 hours to review test reports for a single turbine because testing requirements for turbines at natural gas power plants specify each performance test consist of 3 separate test runs per operating scenario/capacity test and 2 to 4 different operating scenario/capacity tests per turbine resulting in 6-12 separate test reports per turbine. This equates to 4.5 to 9 hours of review time per test report. The Department conducts a thorough review of each test report and issues a detailed test report review. The Department currently receives all test reports in paper form but believes that the review process could be more efficient if specific data, such as VOC analyzer data and

turbine operating parameter data, were also submitted electronically. The department commits to working with stakeholders to streamline the testing process and will revisit the workload and fees in the next year or two.

Comment #5:
Comment #5 pertains to the applicability of the annual administrative fee to SRP's four existing turbines (Units S1-S4) at the Santan Generating Station. Each of these turbines was modified in recent years. However, only one out of the four turbines is tested per year, on a rotational basis. The commenter believes that since only one out of the four turbines is tested per year, the $15,130 fee should be charged only for that turbine and not for all four turbines. The commenter is requesting a written confirmation of this interpretation.

Response:
In February 2005, MCAQD revised the rule language in the table contained in Rule 280 § 301.2 (a) to clarify that the annual fee for turbines at primary fuel natural gas utilities specifically applies to "turbines installed/modified after May 10, 1996 and subject to annual source testing or continuous emissions monitoring relative accuracy test audit (CEM RATA) certifications". Because only one of the four existing turbines at Santan Generating Station is tested per year, MCAQD concurs that the $15,130 fee will only be charged for the turbine that is tested that year.

Comment #6:
An increase in the asbestos (NESHAP) notification fees, at the magnitude that the County is proposing, will result in less compliance within Maricopa County. The regulated industry has always been aggravated by one primary issue, the lack of compliance by less than reputable renovation or remodeling contractors who never notify the County of their activities, do not inspect for asbestos as required, performing their work indoors, often at night or on the weekend and almost always in non-compliance. The County NESHAP coordinators have tried to bring these contractors into compliance; however, very little progress has been made. The increase in fees that the County is proposing will hurt those who notify and have no affect on those who do not. The industry strongly believes that this increased fee will push the "non-compliers" further away and may push some who do notify to cease doing so. .

Another comment asked if the increase in NESHAP notification fees will increase the amount of NESHAP compliance officers in the field. If it will not, then an increase, of more than double, in Asbestos NESHAP Notification fees would be unacceptable. It is unreasonable for the asbestos industry to pay higher notification fees and see not return in increased compliance and enforcement of the asbestos regulations. The asbestos industry does not want to see increased NESHAP Notification fees going toward other air quality programs with little or nothing going to the Asbestos NESHAP program. The department should exercise caution so the increase is not implemented in a manner that is counter productive to the programs missions of protecting public health and the environment.

Another comment suggested establishing a fee structure that considers the overall project size and minimizes excessive notification fees on small projects was suggested. The newly proposed Clark County, Nevada NESHAP Notification fees were used as an example. Clark County is proposing to charge $75.00 for notification of the removal of RACM and where the removal of RACM equals or exceeds 160 square feet, 260 linear feet or 35 cubic fee, an additional fee of 1.0 percent of the total contract cost will be assessed. Demolitions will have a flat $50.00 fee. Maricopa County should maintain the current $425 fee for demolition notifications.

Another comment stated that the current NESHAP penalty policy is no longer in step with the federal NESHAP Penalty Policy for which it is based on. When originally drafted, the policy was to be approximately 50% of the federal policy. Over the years US EPA has increased their penalty policy several times. Maricopa County has not and as a result has fallen behind. Increased penalties for non-compliance are one step in assuring better compliance of the Asbestos NESHAP.

Response:

The lack of compliance by less than reputable individuals is a problem faced in all air quality permitting programs. MCAQD agrees that an increased asbestos notification and plan review filing fee may push those individuals who choose not to notify further away and may push some who do notify to cease doing so. However, the goal of the proposed fee for asbestos notifications is to recover program costs for handling notifications and corresponding inspections under the existing NESHAP regulation. All notifications must be logged in, reviewed and the data entered into the database. Even the notifications claiming that asbestos is not present need review and follow-up.

Approximately 550 notifications were received in fiscal year 2002-03 and slightly fewer in fiscal year 2003-04. MCAQD estimated the average time per notification is 6.77 hours. This includes the notification review and tracking, travel, complaint investigation, targeted compliance inspections, joint inspections, and report writing. This amounts to 3,724 workload hours per year. Fulltime equivalent (FTE) requirements were determined by dividing workload hours by a standard 1,478 annual hours per FTE. It was determine that approximately 2.5 field FTEs are needed in the Asbestos NESHAP unit. MCAQD currently employs 2 full-time air quality inspectors and a unit supervisor in the Asbestos NESHAP Unit. The department complete similar workload analyses for all air quality permit compliance activities and determined that small source permit compliance as a whole (including asbestos, tank trucks, burn permits, general permits, and non-title V permits) needed 2 additional field/engineer FTEs. The department is proposing to hire these 2 additional FTEs in fiscal year 05-06. One position will assist the air quality compliance units in identifying sources operating without required permits or notifications by obtaining and searching business and local government business and building permit databases. This should result in fewer “non-notifiers”.

MCAQD anticipates revisiting the workload analysis and fees in the next year or two and commits to working with stakeholders at that time to determine if an alternate fee structure for the Asbestos NESHAP program would be more appropriate.

MCAQD currently calculates Asbestos NESHAP violation penalties by following the "Arizona Asbestos NESHAP Civil Penalty Policy Computation Worksheet" developed by the Arizona Department of Environmental Quality and contained in ADEQ's draft "Air Quality Civil Penalty Policy" dated 4-19-04. We acknowledge that the ADEQ Asbestos NESHAP Civil Penalty Policy differs from U.S. EPA's Asbestos Demolition and Renovation Civil Penalty Policy (dated May 5, 1992). MCAQD is in the process of reviewing and revising both the "Air Quality Violation Reporting and Enforcement Policy" and the "Air Quality Violation Penalty Policy" and we will consider your comment further during this process.